

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. 97-093

RECOMMENDATION TO STATE WATER RESOURCES CONTROL BOARD TO MODIFY ADMINISTRATIVE CIVIL LIABILITY IMPOSED ON EAST CHARLESTON, INC., PALO ALTO, SANTA CLARA COUNTY

WHEREAS, THE REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION (the BOARD) FINDS THAT:

1. East Charleston, Inc. (ECI) owns rental property located at 844 East Charleston Road in Palo Alto. Commercial tenants currently include Premiere Insurance Brokerage, Silicon Emgomes Corporation, and REPO-DEPO. The sole shareholder and principal officer of ECI was Ronald Hothem.
2. On November 15, 1995, the Board adopted Order No. 95-222, site cleanup requirements (SCR) for investigation and cleanup of onsite soil and groundwater contamination. Tasks in the SCR include submittal of technical reports for a remedial investigation workplan, results of the remedial investigation, and proposed final remedial actions and cleanup standards.
3. On July 17, 1996, the Board imposed administrative civil liability (ACL) totaling \$193,800 against East Charleston, Inc. as follows:
 - A. Order No. 96-108 imposed ACL of \$184,400 for failure to submit a remedial investigation workplan as required by the SCR as follows:

i. Amount to be paid within 30 days of the date of Order.	\$ 36,880
ii. Amount suspended if a satisfactory remedial investigation workplan is submitted report by August 15, 1996.	\$ 46,100
iii. Amount suspended if a satisfactory remedial investigation report is submitted report by June 1, 1997.	<u>\$101,420</u>
Total	\$184,400
 - B. Order No. 96-109 imposed ACL of \$9,400 for failure to submit a technical report describing ownership of ECI pursuant to Section 13267. This amount was to be paid within 30 days of the date of the Order.

Staff costs in preparing Orders 96-108 and 96-109 totaled \$2,760 and are incorporated into the amounts payable within 30 days.

4. On August 16, 1996, ECI appealed the Board's enforcement action to the State Board. The appeal is still under review and the State Board has taken no action. ECI has not yet paid the ACL of \$36,880 and \$9,400.
5. ECI submitted a satisfactory remedial investigation workplan on Aug. 15, 1996, suspending \$46,100 of the total liability; and a satisfactory remedial investigation report on June 2, 1997, suspending \$101,420 of the total liability.
6. Mr. Hothem died in an industrial accident in October 1996 and his wife and children are the beneficiaries of his estate. ECI and Mr. Hothem's estate (as the sole shareholder of ECI) have agreed to continue remedial investigation work at the site but have requested that the Board consider suspending or waiving the ACL due ($\$36,880 + \$9,400 = \$46,280$) in light of Mr. Hothem's death. This request by ECI includes a commitment to pay \$2,760 in staff costs if the ACL is amended as requested by ECI.
7. ECI's rationale for suspending or waiving the ACL is as follows:
 - a. Although the ACL was imposed on ECI, it was directed at Hothem. As the sole shareholder and the principal officer Hothem was in charge of complying with the Board's directives. To the extent that the fines were directed at Hothem, his death mitigates the effectiveness of any message that the Board was trying to convey to him.
 - b. Payment of the \$46,280 ACL may jeopardize ECI's ability to pay for remedial investigation and cleanup work. ECI's financial condition is tenuous and the additional burden of paying fines might force ECI into bankruptcy.
8. The changed circumstances cited in Finding 7.a warrant a modification of the ACL to no longer impose the amount payable to the State (\$46,280) except that the ACL should still require payment of \$2,760 for staff costs. Regional Board's recommendation to amend the ACL is made with the understanding that the Board expects full cooperation for the remaining investigation and cleanup at the site.
9. This action is in order to enforce the laws and regulations administered by the Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
10. The Board has notified the discharger and all interested agencies and persons of its intent to consider a resolution recommending modification of ACL imposed on East Charleston, Inc. and has provided them with an opportunity to submit their written comments.
11. The Board, in a public meeting, heard and considered all comments pertaining to the proposed recommendation.

NOW, BE IT RESOLVED, that the Board recommends that the State Board modify the ACL against East Charleston, Inc. under Orders 96-108 and 96-109 as follows:

- A. Unsuspended ACL from Orders 96-108 (\$36,880) and 96-109 (\$9,400) should no longer be imposed, except for staff costs, totaling \$2,760 which should still be required to be paid.
- B. East Charleston, Inc. should be required to pay staff costs to the State Water Pollution Cleanup and Abatement Account within 30 days following State Board action on the appeal.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the forgoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 16, 1997.



Loretta K. Barsamian
Executive Officer